

**IDAPA 08 - STATE BOARD OF EDUCATION  
DEPARTMENT OF EDUCATION**

**08.02.02 - RULES GOVERNING UNIFORMITY**

**DOCKET NO. 08-0202-0807**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 20, 2008.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-105 and 33-107 Idaho Code, and 33-130 and 33-312, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**TUESDAY - OCTOBER 21, 2008 - 1:00 pm**

**STATE DEPARTMENT OF EDUCATION  
Lewis & Clark Conference Room  
Len B. Jordan Building, 2nd Floor  
650 West State Street, Boise, ID**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2008 Legislature passed a bill requiring student teachers and individuals who have unsupervised contact with students to have a criminal history check (CHC). The bill also provides for a statewide list of substitute teachers. The rule includes definitions and addresses the process of obtaining a criminal history check for applicants for certification, school district employees, substitute teachers, student teachers and individuals who have unsupervised contact with students in a K-12 setting.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rule will help implement the legislated changes which became effective July 1, 2008 and clarify current procedures for criminal history checks on required persons in the K-12 school setting which now includes people with unsupervised contact with students and student teachers.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

\$40 for undergoing a criminal history check (CHC). The CHC is based on a ten finger fingerprint card or scan sent to the Idaho State Police, Bureau of Criminal Identification (BCI) and the Federal Bureau of Investigations (FBI). The fee established in Section 33-130.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted. Comments were solicited from parties involved in the criminal history check process including school administrators and human resources personnel.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance

on technical questions concerning the temporary and proposed rule, contact Christina Linder, (208) 332-6886.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 18th day of August, 2008.

Tom Luna  
Superintendent of Public Instruction  
State Department of Education  
650 West State St, 2nd Floor  
PO Box 83720  
Boise, ID 83720-0027  
(208) 332-6812; f (208) 334-2228

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0807**

**067. -- 0754. (RESERVED).**

**075. FINGERPRINTING AND CRIMINAL HISTORY CHECKS (SECTIONS 33-130 AND 33-512, IDAHO CODE).**

All certificated and noncertificated employees and other individuals who are required by the provisions of section 33-130, Idaho Code must undergo a criminal history check. (8-20-08)T

**01. Definitions.** (8-20-08)T

**a. Applicant.** An individual applying for Idaho Certification or a certificated or non-certificated individual applying for employment. (8-20-08)T

**b. Break-in-Service.** A voluntary or involuntary termination in employment, including retirement. (8-20-08)T

**c. Candidate.** An individual attending a postsecondary program. (8-20-08)T

**d. Certificated Employee.** An individual who holds an Idaho education certificate and is employed in a certificated position in a LEA. (8-20-08)T

**e. Contractor.** An agency, company/business, or individual that has signed a contract or agreement to provide services to an LEA and private or parochial school. (8-20-08)T

**f. Conviction.** The final judgment on a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere, or the sentence has been suspended, deferred, or withheld on a felony or misdemeanor as defined by Section 18-110 and Section 18-111, Idaho Code. (8-20-08)T

**g. Criminal History Check (CHC).** A ten (10) finger fingerprint process to determine if an applicant has criminal arrests and convictions in Idaho, any other state, or applicable jurisdictions. (8-20-08)T

**h. Criminal History Check Result.** Information resulting from processing fingerprints through the databases maintained by the Bureau of Criminal Identification (BCI), Federal Bureau of Investigation (FBI) and the Idaho Statewide Sex Offender Registry. (8-20-08)T

**i.** Multiple Assignments. When an individual works in two or more LEAs or an LEA and private school simultaneously. (8-20-08)T

**j.** Non-Certificated Employee. An individual employed in a non-certificated position. (8-20-08)T

**k.** Open Date. The date a fingerprint card or scan is entered into the database as an electronic file. (8-20-08)T

**l.** Rejected Fingerprint Cards. A fingerprint card that has been returned by the BCL, FBI or SDE for poor quality prints, lack of signature, card being older than six (6) months, or other incomplete information. (8-20-08)T

**m.** Scan. The process of capturing an individual's fingerprints by an electronic process. (8-20-08)T

**n.** Unsupervised Contact. Direct contact or interaction with students not under the direct supervision of a school district employee on a continuing basis in a K-12 setting. This includes contact or interaction with students in scheduled school activities that occur outside of the school or outside of normal school hours. This excludes extra-curricular trips of one-day length starting during the school day. (8-20-08)T

**02.** Fee. The state department of education shall charge a forty dollars (\$40.00) fee for undergoing a criminal history check. (8-20-08)T

**03.** Rejected Fingerprint Cards or Scans. (8-20-08)T

**a.** When a fingerprint card has been rejected a new completed fingerprint card is required. (8-20-08)T

**b.** The rejected fingerprint card will be sent back to the originating LEA, private or parochial school, contractors, postsecondary program, or individual. (8-20-08)T

**c.** A new fingerprint card must be completed by a law enforcement agency to ensure legible fingerprints. Both the rejected fingerprint card and the new fingerprint card must be returned to the SDE within twenty (20) calendar days. (8-20-08)T

**d.** If the new fingerprint card and rejected fingerprint card are returned after the twenty (20) calendar day time period a forty dollar (\$40) fee is required to be paid. (8-20-08)T

**04.** Secured CHC Website. The SDE will maintain a CHC website listing the CHC results. The LEA, private or parochial school, contractor or postsecondary program may view the results or status of an applicant, employee or candidate. (8-20-08)T

**a.** Upon a signed agreement the SDE will issue a password to access the CHC website. (8-20-08)T

**b.** Each LEA, private or parochial school, contractor and postsecondary program will have access to the CHC secure site listing their employees, statewide substitute teacher list, newly certified list and student teacher list. (8-20-08)T

**05.** Certificated Educators. (8-20-08)T

**a.** The SDE will maintain a list of newly certificated educators. Educators stay on this list for one (1) year from their individual open date. Educators on this list may be employed by a LEA without a new CHC. (8-20-08)T

**b.** The SDE will make the final determination if an applicant is eligible for Idaho certification. (8-20-08)T

**c.** If the SDE makes a determination that the applicant is not eligible for Idaho certification, the SDE may deny the applicant Idaho certification. Upon receiving the written denial the applicant may request a hearing pursuant to section 33-1209, Idaho Code. (8-20-08)T

**06. Non-Certificated Employees.** Non-certificated employees are required to complete a CHC pursuant to section 33-130, Idaho Code. The CHC results will be posted on the CHC website for their employer to review. (8-20-08)T

**07. Substitute Teachers.** Substitute teachers as defined in section 33-512(15), Idaho Code must undergo a criminal history check. The State Department of Education shall maintain a statewide substitute teacher list. To remain on the list on the list a substitute teacher shall undergo a criminal history check every five (5) years in accordance with section 33-512, Idaho code. Substitute teachers on the list do not need to complete a multiple assignment form nor are subject to break in service provisions. (8-20-08)T

**08. Break In Service.** (8-20-08)T

**a.** When an employee returns to any LEA after a break in service a new criminal history check must be completed. (8-20-08)T

**b.** When an employee changes employment between LEAs a new CHC must be completed regardless of the most recent CHC. (8-20-08)T

**09. Postsecondary.** (8-20-08)T

**a.** The postsecondary program will submit a completed fingerprint card or scan for all candidates who are applying for student teaching, internships or practicum. (8-20-08)T

**b.** The SDE will make a preliminary determination based on the CHC result if the candidate is eligible for certification in Idaho. This decision will be forwarded to the postsecondary program concerning the eligibility of their candidate. (8-20-08)T

**c.** The SDE will move a candidate from the student teacher list to the newly certified list when an application for certification is approved. (8-20-08)T